Supreme Court, U.S.
FILED
APR 1 1992
OFFICE OF THE CLERK

No. 91-1346

In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

LELAND THOMPSON, JR., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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1. The central submission in our petition is that statutes of limitation are not construed to bar suits by the United States in the absence of an express provision to that effect. See Pet. 10-12. The bulk of respondents' argument (Br. in Opp. 10-21) is devoted to the proposition that "the object of the [Pueblo Lands] Act" (Br. in Opp. 12; see *id.* at 12-13), the structure of the Act (*id.* at 13-15), and post-enactment legislative history (see *id.* at 15-16) can be taken to support the court of appeals' conclusion that the Pueblo Lands Act implicitly bars this suit by the United States. But the very length and complexity of this presentation, together with the pronounced absence of any suggestion that any particular

provision of the Act affirmatively bars this suit, establishes that the case squarely presents the question raised by the petition. The fact of the matter is that respondents must concede that no provision of the Act suggests that this suit is barred; the court of appeals' conclusion that the suit is barred rests entirely on its notions of the policies that should have been implicit in the statute. That mode of analysis is incorrect, for the reasons set forth in detail in our petition.

In any event, respondents' discussion of the structure of the Pueblo Lands Act is fatally flawed. At the core of their submission is the proposition that the issuance of a report by the Pueblo Lands Board (the Board) in itself constituted a definitive resolution of claims to title. See Br. in Opp. 19-21. But under that view, the Act's twin processes for definitive resolution of title issues identified by the Board[1]—quiet

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[1] Contrary to respondents' argument (Br. in Opp. 19-20), there is nothing odd about a statutory requirement that a mere administrative finding that the title of the Pueblo and the United States has been extinguished must be finalized by a public filing to be made by one of the members of the Board. This did not "give the Secretary a second, unilateral, opportunity to reverse a determination of extinguishment in which he had already joined." See *id.* at 20. Rather, it reflects the commonsense notion that final disposition of title to real property claims customarily is accomplished either by judicial decree or filings in official public records, rather than by administrative determinations. The "report" of the Board—an Executive Branch body—was intended to guide the Board's members in performing further functions under the Act—not, in itself, to bind the United States and private parties. We think the most likely reason that the Secretary made no such filing with respect to the overlap land in question here is that nobody appeared before the Board claiming title to the land—a circum-

title suits brought by the Attorney General under Section 3 for land in which the Board found that Indian title had not been extinguished, and the filing of a plat and field notes under Section 13 for land to which the Board believed Indian title had been extinguished—would be rendered entirely superfluous, if not counterproductive.[2] Those sections provide express and clear procedures that, if completed, barred future claims by the United States. Any interpretation of the Act that renders those provisions entirely superfluous, and assumes that Congress intended implicitly to bar suits by the United States under other provisions that do not even mention the United States, cannot pass muster under this Court's decisions. Those decisions require "not a liberal, but a restrictive, a strict, construction of such statutes when it has been urged to apply them to bar the rights of the Government." *United States* v. *Whited & Wheless, Ltd.*, 246 U.S. 552, 561 (1918).[3]

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stance that suggests that the procedures of the Act were simply not invoked to bring about a definitive resolution of the title dispute at issue in this case.

[2] Moreover, this submission entirely ignores the fact —acknowledged by the court of appeals—that Section 14 of the Act (which is not mentioned in respondents' argument) constitutes an "express congressional directive," Pet. App. 13a, that the Board was not to dispossess Indians on the basis of overlapping grants. Section 14 provides powerful evidence that the Board's determination should not be construed as a final resolution of the Pueblo's claim in this case.

[3] Respondents also suggest (Br. in Opp. 22 n.15) that the United States' suit is barred by the language of the 1879 statute confirming respondents' grant, which, as respondents note, operated "as a quitclaim or relinquishment of all title or claim on the part of the United States." See *ibid.* As respondents note, however, the same statute expressly preserved whatever

2. Respondents also suggest (Br. in Opp. 22-24) that *United States* v. *Title Insurance & Trust Co.*, 265 U.S. 472 (1924), supports the court of appeals' reasoning that any bar the Pueblo Lands Act interposed against suits by the Pueblo should be extended by implication to bar suits by the United States in its capacity as trustee for the Pueblo. This contention is meritless. As explained in our petition (Pet. 14-15), the United States' right to sue is distinct from that of the Pueblo, arising "out of its right to invoke the aid of a court of equity in removing unlawful obstacles to the fulfillment of its obligations [as a guardian of the Indians]." *United States* v. *Minnesota*, 270 U.S. 181, 194 (1926). Thus, the existence of a bar against suit by the Pueblo in no way would suggest that the United States could not sue to uphold the Pueblo's title.

Moreover, the differences between *Title Insurance & Trust Co.* and this case illustrate precisely why the United States' suit here is not barred. That case involved the Act of Mar. 3, 1851, ch. 41, 9 Stat. 631. Like the Pueblo Lands Act, the 1851 Act established an administrative tribunal to review land claims, see § 1, 9 Stat. 631, and provided a number of express procedures for extinguishing rights of the United States, one of which stated that "any patent to be issued under this act, shall be conclusive between the United States and the * * * claimants." § 15, 9 Stat. 634; see *Title Insurance & Trust Co.*, 265 U.S. at 481;

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adverse rights the Pueblo then held. Hence, the only fair reading of the grant is to bar only the United States' right to claim legal title to the land on its *own* behalf. Because the Pueblo's right to sue clearly was preserved (as respondents concede, see *ibid.*), it is not reasonable to suggest that the 1879 statute prohibited the United States from asserting rights as trustee for the Pueblo.

Summa Corp. v. *California*, 466 U.S. 198, 203 (1984) (summarizing procedures under the 1851 Act). The *Title Insurance & Trust Co.* case involved successors to individuals who complied with the procedures established by the 1851 Act, brought claims before the commission, and received valid patents that, under the express terms of the 1851 Act, were conclusive against the United States. Some time later, the United States attempted to raise claims in its trust capacity, on behalf of Indians who had failed to contest the patentees' claims before the commission in a timely manner. This Court rejected the Indians' claims, agreeing that "the patent issued on the confirmation of the grant passed the full title, unencumbered by any right in the Indians." 265 U.S. at 482. In this case, by contrast, the predecessors in interest of respondents not only failed to file any claim with the Board or establish adverse possession under the standards set forth in the Pueblo Lands Act; they failed to secure either a judgment in a Section 3 action (which would have been conclusive against the United States under Section 5 of the Pueblo Lands Act) or the filing of a plat and field notes describing their land (which would have been conclusive against the United States under Section 13). Accordingly, the principles of the *Title Insurance & Trust Co.* case in no way suggest that this suit by the United States is barred.

To the contrary, for the reasons stated in our petition, this Court's decision in *United States* v. *Candelaria*, 271 U.S. 432 (1926), strongly suggests that this suit should be allowed to proceed. In *Candelaria*, the Court held that the United States was not barred from bringing a quiet-title action on behalf of the Pueblo of Laguna against non-Indians who previously

had prevailed in a quiet-title action brought by the Pueblo concerning the same land. Under *Candelaria*, the United States would not be barred here even if the Pueblo of Santo Domingo had responded to the Board's report by instituting an independent suit, as allowed by Section 4. The court of appeals' conclusion that the United States nevertheless is implicitly barred by the Pueblo's mere failure to file suit is simply insupportable.

For the foregoing reasons and those given in the petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

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MARCH 1992